

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

TAMMY ROJAS,)	
)	
Plaintiff,)	
)	8:09CV268-LSC-FG3
vs.)	
)	ORDER
HECTOR CONTRERAS,)	
)	
Defendant.)	

This case is before the magistrate judge for full pretrial supervision. On November 18, 2009, plaintiff's attorney informed the court that the case had settled. Settlement documents were due December 18, 2009 but were not filed. Plaintiff's attorney now advises that the plaintiff is deceased.

In this regard, Fed. R. Civ. P. 26 provides:

(a) Death.

(1) Substitution if the Claim Is Not Extinguished.

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. *If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.*

(2) Continuation Among the Remaining Parties.

After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. *The death should be noted on the record.*

(3) Service.

A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(Emphasis added).

IT IS ORDERED:

1. Plaintiff's counsel shall file a "Suggestion of Death" on or before the close of business (4:45 p.m.) on **Friday, January 15, 2010**. This document shall include information regarding

- (a) the date of the plaintiff's death;
- (b) when a personal representative is likely to be appointed; and
- (c) when the plaintiff's personal representative will file a motion for substitution of parties pursuant to Fed. R. Civ. P. 25(a).

DATED January 12, 2010.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge